

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff, No. 4:20-CR-288-DPM-1

v.

MUJERA BENJAMIN LUNG'AH0, Wednesday, August 23, 2023,  
Little Rock, Arkansas

Defendant.

**TRANSCRIPT OF PLEA**  
BEFORE THE HONORABLE D.P. MARSHALL, JR.,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Plaintiff:

MR. JOHN RAY WHITE,  
Assistant United States Attorney  
United States Attorney's Office  
Eastern District of Arkansas  
Post Office Box 1229  
Little Rock, Arkansas 72203-1229

On Behalf of the Defendant:

MR. MICHAEL KIEL KAISER,  
Lassiter & Cassinelli  
1218 West Sixth Street  
Little Rock, AR 72201

Defendant present

*Proceedings recorded by FTR Gold. Transcript prepared  
utilizing computer-aided transcription*

1 P R O C E E D I N G S

2 THE COURT: This is the United States against Mujera  
3 Lung'aho. It's case number 4:20-CR-288-DPM-1. Mr. Lung'aho is  
4 here -- welcome back, sir -- with Mr. Kaiser at his side.

5 MR. KAISER: Good morning, Judge.

6 THE COURT: The United States is here in the person of  
7 Mr. White. Agent Hicks at the table. Good to see both of you.

8 MR. WHITE: Thank you, your Honor.

9 THE COURT: We're here today, Mr. Lung'aho, because  
10 the lawyers have told my staff that you're thinking about making  
11 a deal with the United States and pleading guilty conditionally  
12 to one of these charges. For all of that to happen, I must make  
13 certain of several things. So bear with me this morning,  
14 please.

15 Counsel, as y'all will note, we do not have a court  
16 reporter. The Court is busy this morning and the reporters are  
17 otherwise occupied. Our transcript is therefore being made by a  
18 recording. Unless I say otherwise, therefore, I need everyone  
19 to remain seated on your microphone speaking at pledge of  
20 allegiance speed and with -- with emotion so that everything can  
21 be recorded and we can have a good transcript.

22 All right. Let's get back to business.

23 If you will please stand, Mr. Lung'aho. This is one of  
24 those times I need you to stand. My deputy will give you the  
25 oath.

1 (Defendant sworn.)

2 THE COURT: You can be seated, sir. Thank you.

3 And tell me the truth, Mr. Lung'aho, because it's a crime  
4 if a man lies after he has taken the oath. Do you understand?

5 THE DEFENDANT: Yes, I understand.

6 THE COURT: Good. Is your mind clear?

7 THE DEFENDANT: It is very clear.

8 THE COURT: Are you under the influence of any  
9 substance at all that clouds your mind?

10 THE DEFENDANT: Not at all.

11 THE COURT: Had any alcohol to drink in the last day  
12 or two?

13 THE DEFENDANT: No, sir.

14 THE COURT: What about medicine, prescription or  
15 over-the-counter? Are you taking any that affects your  
16 thinking?

17 THE DEFENDANT: Lexapro to help with anxiety, but I  
18 don't think it would alter my thought process.

19 THE COURT: I appreciate the clarification. Do you  
20 think that that medicine allows you to think better and more  
21 clearly?

22 THE DEFENDANT: Not really, no.

23 THE COURT: Do you find it interferes with your  
24 thinking?

25 THE DEFENDANT: No. No.

1 THE COURT: Okay. Do you think your mind is clear  
2 today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you under the influence of any  
5 substance at all that, as far as you can tell, clouds your mind?

6 THE DEFENDANT: No, sir.

7 THE COURT: How has Mr. Kaiser done as your lawyer?

8 THE DEFENDANT: Very well.

9 THE COURT: Has he communicated with you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Explained your options to you?

12 THE DEFENDANT: Yes.

13 THE COURT: Gotten you ready for today?

14 THE DEFENDANT: Yes.

15 THE COURT: Good. Do you understand that while the  
16 lawyer gets to make many of the smaller decisions in the case,  
17 what I'll call the tactical decisions, the client gets to make  
18 the most important decisions, and among those is how to plead.  
19 Do you understand that architecture?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that it's your decision  
22 and yours alone on whether to go to trial or offer a guilty  
23 plea?

24 THE DEFENDANT: I do.

25 THE COURT: Have you thought carefully about what

1 choice to make?

2 THE DEFENDANT: Indeed, I have.

3 THE COURT: Good. Have you talked thoroughly with  
4 Mr. Kaiser about your options?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that whichever fork in  
7 that road you want to take, trial or offering a plea, either  
8 fork is fine with me, with the Court. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: If you want a trial, we'll have a trial.  
11 If you want to offer a plea, I'll consider it.

12 THE DEFENDANT: Right.

13 THE COURT: It's your call.

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Has anyone threatened you to get  
16 you to change your plea?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone threatened someone that you  
19 love or something that you care about to get you to change your  
20 plea?

21 THE DEFENDANT: No, they have not.

22 THE COURT: I understand that this proposed plea  
23 agreement is a two-way street of mutual promises. Has anyone  
24 made any other promise to you to get you to change your plea?

25 THE DEFENDANT: Not anything other than what's

1 articulated in the plea to --

2 THE COURT: Good. That's what I wanted to pin down.  
3 It's all in the paperwork, is it?

4 THE DEFENDANT: Yes.

5 THE COURT: Good.

6 The law requires me, Mr. Lung'aho, to tell everybody  
7 sitting where you are, each person, that if he is not a citizen  
8 of the United States and he pleads guilty to a charge, a serious  
9 charge like the one you're considering pleading guilty to, that  
10 there could be serious immigration consequences in addition to  
11 the punishments prescribed by law. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Good. My memory is that you are an  
14 educated man; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you read the charges pending against  
17 you?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Do you understand them?

20 THE DEFENDANT: Yes.

21 THE COURT: In particular, Count 11. Have you read it  
22 and do you understand it?

23 THE DEFENDANT: Yes, I have, and I do understand it.

24 THE COURT: Good. And thank you for answering both  
25 parts of my compound question.

1           This proposed plea agreement, have you read it?

2           THE DEFENDANT: Yes.

3           THE COURT: Have you discussed it thoroughly with  
4 Mr. Kaiser?

5           THE DEFENDANT: Yes, I have.

6           THE COURT: Did he answer any questions you may have?

7           THE DEFENDANT: Yes, he did.

8           THE COURT: Have y'all discussed possible sentences,  
9 how that might sort out?

10          THE DEFENDANT: Yes, we have gone over it, to my  
11 understanding as the best we could so far.

12          THE COURT: Good. Don't go into the details. I  
13 didn't mean to inquire into the details of y'all's talk. That's  
14 privileged because it's between you and your lawyer. I just  
15 wanted to be sure that you had had discussions in the category  
16 of sentencing.

17          THE DEFENDANT: Yes, we have.

18          THE COURT: Good. Whatever Mr. Kaiser may have said  
19 to you is a prediction, his educated guess about how things are  
20 going to sort out. Do you understand that?

21          THE DEFENDANT: Yes, sir.

22          THE COURT: He has been in front of me and in this  
23 court many times. He knows your case well, obviously. He's  
24 litigated it vigorously here and in the court of appeals. And  
25 he knows the law. But, a couple of points:

1           One: it's just not within his power to see the future. He  
2 doesn't know what I'm going to do. Are you with me?

3           THE DEFENDANT: Yes.

4           THE COURT: Two: he can't promise you a sentence.  
5 That's my call down the line, not his. Do you understand?

6           THE DEFENDANT: Yes.

7           THE COURT: And three: he makes mistakes. He's a  
8 human being. He's doing, I'm sure, the best he can, but he's  
9 not perfect. What I'm trying to underline for you here is the  
10 uncertainty about sentencing as we sit here today. Do you  
11 understand that?

12          THE DEFENDANT: Yes, I understand that.

13          THE COURT: Good. If you're disappointed in the  
14 sentence that I ultimately decide on, that disappointment is not  
15 a sufficient reason to say to me, "Judge Marshall, please give  
16 me my guilty plea back, I would like to have a trial. Now that  
17 I know what you're going to do, I'm going to take my chances in  
18 front of a jury." Do you understand?

19          THE DEFENDANT: I understand.

20          THE COURT: Good.

21          Mr. Kaiser, how are you today?

22          MR. KAISER: Doing quite well, your Honor, thank you.

23          THE COURT: Good. Do you have any concern about the  
24 clarity of your client's mind?

25          MR. KAISER: None whatsoever.



1 THE COURT: Have y'all communicated regularly and  
2 thoroughly in recent days and weeks about the matter now before  
3 the Court?

4 MR. KAISER: Yes, sir.

5 THE COURT: Have you conveyed to him all plea offers  
6 made by the United States?

7 MR. KAISER: I have, your Honor.

8 THE COURT: From your perspective, is the  
9 lawyer-client relationship intact?

10 MR. KAISER: Yes, sir.

11 THE COURT: Good. Thank you.

12 I find that the lawyer-client relationship is in good  
13 shape. I also find, Mr. Lung'aho, that your mind is clear and  
14 you know exactly why we're here and you can make the decisions  
15 that you need to make today.

16 If at any point during the hearing in response to my  
17 question or question of mine or just in general you need to take  
18 a break to consult privately with Mr. Kaiser, please tell me and  
19 I will allow you to do so. Okay?

20 THE DEFENDANT: Okay.

21 THE COURT: Good.

22 Mr. White, how are you?

23 MR. WHITE: I'm good, your Honor.

24 THE COURT: Good. Resist the temptation to stand up.  
25 I know it's an old habit with you. Are things okay down the

1 street?

2 MR. WHITE: Yes, sir, they are. I just -- there's  
3 lots going on, as the Court just mentioned a minute ago. And I  
4 just came from Judge Baker's courtroom where they're about to  
5 start a closing argument in another trial.

6 THE COURT: I knew that my sister Baker was getting  
7 close on that matter and was about to give the case to the jury.  
8 I haven't had the chance to ask her about the nature of the  
9 case. What's the charge?

10 MR. WHITE: Felon in possession of ammunition, your  
11 Honor.

12 THE COURT: Okay. Well -- and who among your  
13 colleagues has been up there working hard?

14 MR. WHITE: Erin O'Leary and Bart Dickinson for the  
15 government. And then Ms. Gray and Alex Betton are representing  
16 the defendant.

17 THE COURT: Very good. Okay. Well, maybe we can get  
18 you up to watch, but I don't know. We'll see.

19 Would you please -- as I understand the parties' agreement,  
20 Mr. Lung'aho is considering pleading guilty to Count 11,  
21 maliciously -- that makes it a crime to maliciously destroy  
22 property by fire, government property.

23 Would you please put some flesh on those bones on Count 11  
24 and then put on the record the potential penalties that he would  
25 face if I accept that plea.

1 MR. WHITE: I will with this caveat, your Honor. I  
2 brought over everything I thought I needed except for the  
3 Indictment.

4 THE COURT: Well, let me try and you double-check me,  
5 how about?

6 MR. WHITE: That would be great, if the Court doesn't  
7 mind.

8 THE COURT: So as I read the Indictment -- and I think  
9 it's a Superseding Indictment, it's Document 56 in the court  
10 file -- Count 11 alleges that on or about September 3rd, 2020,  
11 in the Eastern District of Arkansas, the defendant, Mujera  
12 Benjamin Lung'aho, maliciously damaged and destroyed by means of  
13 fire, a vehicle, namely: a patrol car, located at the North  
14 Little Rock Police Department Rose City Substation, which was  
15 owned in whole or in part by the City of North Little Rock, an  
16 organization receiving federal financial assistance.

17 All in violation of Title 18, United States Code,  
18 Section 844(f)(1).

19 Mr. Lung'aho, do you understand that charge?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you clear on what it is the grand jury  
22 is saying that you supposedly did wrong?

23 THE DEFENDANT: Yes.

24 THE COURT: Good.

25 Counsel, double-check me on potential penalties. I believe

1 the statute -- the applicable statute says not less than five  
2 years in prison, not more than 20 years in prison. So somewhere  
3 in that range. Not more than three years of supervision after  
4 prison when you'd be under the thumb of the probation office. A  
5 fine of not more than \$250,000, assuming ability to pay, and a  
6 \$100 fee called a special assessment.

7 Mr. White, do you agree that those are the applicable  
8 penalties?

9 MR. WHITE: I do, your Honor.

10 THE COURT: Mr. Kaiser?

11 MR. KAISER: Yes, sir.

12 THE COURT: Do you understand those potential  
13 penalties, Mr. Lung'aho?

14 THE DEFENDANT: Yes.

15 THE COURT: Good.

16 All right. I believe I covered all the ground that I  
17 need -- needed to earlier in the case about whether you thought  
18 about all of this and your options here in consultation with  
19 counsel, whether you've been threatened or not to make the deal.  
20 So let's move into this proposed plea agreement and the  
21 particulars of it.

22 I want to be sure that you understand it, Mr. Lung'aho, and  
23 that you know what you're getting and what you're giving up in  
24 the bargain, okay?

25 THE DEFENDANT: Okay.

1 THE COURT: Mr. White, would you summarize the  
2 parties' plea agreement?

3 MR. WHITE: I will, your Honor.

4 The biggest transaction, your Honor, is that Mr. Lung'aho  
5 agrees to plead guilty to Count 11 of the Superseding  
6 Indictment. And following the Court's acceptance of his guilty  
7 plea, the United States will ask the Court to dismiss the other  
8 counts in the Superseding Indictment that Mr. Lung'aho is  
9 charged with.

10 There are a number of other particular provisions of the  
11 plea agreement, and the Court knows usually I paraphrase those  
12 provisions, but because Mr. Kaiser has been as particular as he  
13 has about some of the language, I'm just going to read some of  
14 those provisions if that's all right. And I'll just start with  
15 paragraph 2 of the plea agreement, describes the elements of the  
16 offense. And then the last paragraph of paragraph 2 provides  
17 that the defendant is going to agree that he committed those  
18 offenses, but that his admission to paragraph 2D is not intended  
19 to waive his arguments related to the conditional appeal that  
20 the parties have agreed to in writing.

21 Paragraph 3 deals with potential penalties.

22 Paragraph 4 deals with waivers, and it begins with a number  
23 of waivers related to his guilty plea: That he's waiving his  
24 right to appeal pretty much everything including his guilty  
25 plea, the Court's sentence, except he reserves the right to

1 appeal claims of prosecutorial misconduct, or if the Court,  
2 after determining his guideline range, imposes a sentence above  
3 the guideline range and he makes a contemporaneous objection, he  
4 can appeal that also.

5 Particularly in paragraph 4 -- I know it's -- I would call  
6 it -- what is it, clause two now? That he's reserving his right  
7 to appeal the Court's ruling that 844 (f)(1) is constitutional  
8 as applied to his case as set forth in Document 246 in which the  
9 Court denied his motion to dismiss Counts 1, 2, 6, 7, 10, and 11  
10 of the Superseding Indictment.

11 He is waiving his right to collaterally attack the  
12 conviction. That is after all of his appeals have run and if he  
13 wants to attack the conviction some other way, he cannot do that  
14 unless he shows prosecutorial misconduct or ineffective  
15 assistance of his own counsel.

16 And then he's also agreed to waive the right to have his  
17 sentence modified under 3582(c)(2) or to object to restitution  
18 or forfeiture that the Court may order as well as a number of  
19 trial rights.

20 And, your Honor -- I can't remember -- did the Court  
21 already go over the -- to plead guilty he'll have to waive the  
22 right to all these -- to be presumed innocent or to confront and  
23 cross-examine witnesses?

24 THE COURT: I did not go through the trial-related  
25 rights, Mr. White, and I would appreciate you doing so and then

1 I'll confirm.

2 MR. WHITE: I'll do that.

3 So he's also waiving the right to plead not guilty or to  
4 persist in that plea and the right to a speedy and public trial  
5 before a jury, he's waiving the right to be presumed innocent  
6 and to have the burden of proof placed on the United States to  
7 establish guilt beyond a reasonable doubt, and the right to  
8 confront and cross-examine witnesses, the right to testify in  
9 his own behalf if he had the intention to or to remain silent if  
10 he had chosen that, to call witnesses or to require them to  
11 appear. And part of the reason that he's -- that that comes up  
12 is that if the Court is going to -- if he intends to plead  
13 guilty, the Court will have to ask him if he's guilty and he'll  
14 be required to say so in open court. And that's one of those  
15 rights. And then he also understands that if there's a question  
16 about his citizenship, a guilty plea may have consequences with  
17 respect to that.

18 Your Honor, the parties in paragraph 5 have kind of  
19 negotiated some stipulations, particularly that -- pardon me --  
20 there's a statutory minimum sentence for the crime charged. And  
21 the United States, as part of its negotiations with the  
22 defendant and Mr. Kaiser, has agreed not to seek a sentence  
23 greater than 84 months imprisonment, notwithstanding the fact  
24 that his -- the statutory range is five years to 20 years. We  
25 have agreed that the base offense level should be calculated

1 pursuant to Guideline Section 2K1.4. And we're recommending  
2 that his offense level be increased under Guideline  
3 Section 3B1.1, only three points, three levels.

4 He understands that he's -- he'll be eligible for a  
5 two-level reduction for acceptance of responsibility and we'll  
6 -- and the United States will ask for a third level if he  
7 doesn't do anything inconsistent with acceptance of  
8 responsibility between his change of plea and sentencing.

9 The parties stipulate there's no other enhancements or  
10 reductions under 2K1.4 Chapter 3 or Chapter 5 of the guidelines  
11 other than those specifically set out in the agreement in the  
12 addendum.

13 And then paragraph 4F provides a factual basis for the  
14 offense as well as some of the relevant conduct that is  
15 described that was part of his offense. And I'm assuming at  
16 this point the Court is wanting me to skip that for the time  
17 being rather than read that; is that correct, your Honor?

18 THE COURT: Yes, on the facts, the factual  
19 stipulations?

20 MR. WHITE: Yes, your Honor.

21 THE COURT: Yes.

22 MR. WHITE: And then he's specifically waiving any  
23 objection to searches or seizures or statements that have been  
24 made as a part of the investigation as well as his guilty plea.

25 And then, finally, in paragraph 5 he acknowledges that



1 despite the fact that the parties have negotiated this pretty  
2 hard, the Court's not bound by the parties' negotiations with  
3 respect to the plea agreement or the addendum. He acknowledges  
4 that the guideline -- the guidelines themselves are advisory and  
5 the Court is not bound by those. There are some other kind of  
6 standard provisions, your Honor.

7 And then we get to paragraph 9D which I want to mention  
8 specifically, and that is with respect to restitution. And the  
9 parties agree that those amounts and those organizations are  
10 entitled to the money that is described in paragraph 9D.

11 There are -- there's a provision on breach of plea  
12 agreement, which is paragraph 14.

13 And then other than that, the provisions are fairly  
14 standard with the exceptions of paragraph 18 -- which I say an  
15 exception -- it's actually standard, but it's important because  
16 in that the defendant acknowledges that he has read the plea  
17 agreement and that he's discussed it with his lawyer and he's  
18 entering into it on purpose.

19 And then there are also, your Honor, is a plea agreement  
20 addendum which we'll ask the Court to file under seal at the  
21 appropriate time.

22 THE COURT: Thank you, Mr. White.

23 Mr. Lung'aho, is that the deal you believe you've made with  
24 the United States?

25 THE DEFENDANT: Yes, it is.

1 THE COURT: Do you understand the deal in general?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand it and each and every  
4 particular?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you thought carefully about whether  
7 to make this deal?

8 THE DEFENDANT: I have.

9 THE COURT: Have you consulted fully with Mr. Kaiser  
10 about whether to make this deal?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you been involved with Mr. Kaiser in  
13 the negotiations of the particular terms of the deal?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that under this deal you  
16 are waiving all of your trial-related rights?

17 THE DEFENDANT: That's correct.

18 THE COURT: And if you plead guilty and I accept,  
19 everyone signs the agreement, then the only question left in the  
20 case will be what's the just and fair sentence under law for  
21 you. Do you follow?

22 THE DEFENDANT: Yes.

23 THE COURT: And we discussed earlier about how that  
24 decision, the sentencing decision is for me to make down the  
25 line, right?

1 THE DEFENDANT: Yes, we did.

2 THE COURT: Good. And you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Good. The waivers that Mr. White went  
5 over in addition to the trial-related rights, do you understand  
6 the other rights that you're waiving?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Do you understand the restitution  
9 obligation that you're undertaking here in this agreement?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand the reservation of your  
12 right to appeal my ruling about the constitutionality of this  
13 statute as applied to you?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Okay. Counsel, a question for both of  
16 you. Does the parties' agreement address what happens if  
17 Mr. Lung'aho is successful on appeal? What happens to the case  
18 as against him? The ultimate practical effect, I would say?

19 MR. WHITE: No, your Honor.

20 THE COURT: Mr. Kaiser?

21 MR. KAISER: It does not.

22 THE COURT: Okay.

23 Mr. Lung'aho, do you understand -- do you recall the  
24 section of the agreement about stipulations, things that the  
25 parties are agreeing?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you understand the last provision of  
3 that section that indicates that I am not bound, the Court is  
4 not bound by the parties' stipulations?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Mr. White, if we had a trial, do  
7 you believe that you and your colleagues on behalf of the United  
8 States could prove each and every fact that is written in  
9 paragraph something F, 5F, as in Frank -- or Foxtrot if we're  
10 going to use our military labeling -- in 5F of the agreement?

11 MR. WHITE: I do, your Honor.

12 THE COURT: Okay. Mr. Lung'aho, do you need to take a  
13 break and visit privately with Mr. Kaiser about anything before  
14 I ask the harder questions?

15 THE DEFENDANT: No.

16 THE COURT: All right. As to Count 11 of the  
17 Superseding Indictment charging you with this malicious  
18 destruction of the North Little Rock police car, arson, here in  
19 the Eastern District of Arkansas, how do you plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: Is that because you are, in fact, guilty  
22 of that charge?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: Do you agree with and stipulate to -- or  
25 do you agree with each and every fact as specified in

1 paragraph 5F of the agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: That's a tentative -- there's some  
4 tentativeness in your voice and your body language. And it's  
5 important -- I have to conclude that there's a sufficient  
6 factual basis for your plea. And so the particulars here are  
7 important. I'll give you a second to talk about that.

8 (Discussion held off the record.)

9 MR. KAISER: We're ready to proceed, your Honor.  
10 Thank you for allowing us that time.

11 THE COURT: You're welcome, Mr. Kaiser.

12 So, Mr. Lung'aho, again, paragraph 5F, as in Foxtrot, in  
13 the agreement, it's at pages five and six. Take a minute and  
14 look back through it.

15 Is each and every fact as written in the parties' agreement  
16 true and correct as far as you know?

17 THE DEFENDANT: Yes. Based on my recollection and  
18 review of the discovery, yes.

19 THE COURT: The statute here makes it a crime for  
20 someone to maliciously damage or destroy or attempt to damage or  
21 destroy by means of fire or an explosive any building, vehicle,  
22 or other personal or real property that's owned wholly or partly  
23 or leased to the United States or a department or agency of it  
24 or some institution or organization receiving federal funds or  
25 federal financial assistance.

1 Did you maliciously damage or attempt to damage by means of  
2 the Molotov cocktail the patrol car located at the North Little  
3 Rock Police Department Rose City Substation, a patrol car owned  
4 by North Little Rock, somewhere between September 3rd, 2020?

5 THE DEFENDANT: I did.

6 THE COURT: Is this what you want to do, Mr. Lung'aho,  
7 to make this deal with the United States and take that appeal  
8 and move on?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you sure?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Kaiser, do you know of any reason I  
13 should not accept the plea?

14 MR. KAISER: No, sir.

15 THE COURT: Mr. White, same question?

16 MR. WHITE: No, your Honor.

17 THE COURT: I find that the crime charged in Count 11  
18 of the Superseding Indictment was committed by you, Mujera  
19 Benjamin Lung'aho, now before the Court. You've sworn to tell  
20 me the truth, sir. You've agreed to the facts as specified in  
21 the parties' plea agreement and you've answered specifically  
22 when I asked you in terms of the statute what your intentions  
23 were on that evening.

24 So there's a sufficient factual basis for the plea. I find  
25 that your plea is knowing and voluntary. You know your rights.

1 You know, I'm certain, what it is that you're getting and what  
2 it is that you're giving up under the agreement, in particular  
3 you understand that we're not going to have a trial. We'll move  
4 on to sentencing. And that you're keeping the right to go to  
5 the court of appeals and ask that court if I was correct or  
6 incorrect in my analysis on whether this statute is  
7 constitutional as applied to you in our circumstances here, the  
8 federal funding issues that are all inside here in the agreement  
9 and that our record was clear about before.

10 I appreciate counsel's work pulling that together.

11 But long story short on this issue, Mr. Lung'aho. I'm  
12 clear, I'm certain that you understand what you're getting and  
13 what you're giving up in the deal.

14 And, last, I don't see any indication that anyone has  
15 pushed or pulled you into doing this. I think you have made up  
16 your own mind about it. And, indeed, as you told me, you had  
17 been, unlike many defendants, deeply involved in the negotiation  
18 of the particular terms of the plea agreement. And I applaud  
19 that. I wish that more of the folks that came through those  
20 doors or the side door had your level of education and  
21 engagement and sophistication, were able to work with your  
22 lawyer in the way you have done to -- it helps the system work  
23 better, quite frankly.

24 So for all of those reasons, I accept your plea of guilty  
25 to Count 11.

1 Mr. White, a motion?

2 MR. WHITE: I ask the Court to dismiss the remaining  
3 counts that are against Mr. Lung'aho, please, your Honor.

4 THE COURT: I grant the United States motion. All  
5 other counts in the Superseding Indictment and all counts in the  
6 original Indictment as to you and you only are dismissed,  
7 Mr. Lung'aho. They're dismissed without prejudice. And we  
8 will -- we will move on in the case to sentencing in a few  
9 months.

10 Counsel, if you'll get with Ms. Black after I leave the  
11 courtroom. She'll come up with a date and time certain for you  
12 that's convenient, I hope, for all of us. And then we'll see  
13 what the court of appeals says about this interesting issue, and  
14 we will all move on with our lives.

15 Mr. Kaiser, any other ground to cover?

16 MR. KAISER: No, sir.

17 THE COURT: Okay. I was going to ask Mr. Lung'aho if  
18 he had any questions, and if so, to consult with you before he  
19 asked me, but I see that you've already done that, so I'll skip  
20 that step.

21 MR. KAISER: Yes, sir.

22 THE COURT: Mr. White, any other ground to cover?

23 MR. WHITE: No, your Honor.

24 THE COURT: All right. Counsel, I thank you for your  
25 work. Obviously a great deal of effort went into this before we



1 came into the courtroom today and I look forward to seeing you  
2 around the bend on our sentencing. We're in recess.

3 (Proceedings concluded.)

4 TRANSCRIBER'S CERTIFICATE

5 I certify that the foregoing is a true and correct  
6 transcript, to the best of my ability, of the recorded  
7 proceedings.

8 /s/B. Graham Higdon, RMR, CRR Date: February 7, 2024  
9 United States Court Reporter  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

B. Graham Higdon, RMR, CRR, United States Court Reporter  
graham\_higdon@ared.uscourts.gov (501)604-5115